

## **PROGRESS REPORT NO. 7**

# **MICHIGAN COURT OF APPEALS DELAY REDUCTION PLAN**

February 11, 2004

### **Work Group Members:**

Judge Hilda R. Gage  
Chief Judge Pro Tem Michael R. Smolenski  
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### **Contributing Judges:**

Judge Richard A. Bandstra  
Judge Jessica R. Cooper  
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Judge Michael J. Talbot  
Judge Helene N. White

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## I. EXECUTIVE SUMMARY

In March of 2002 the Michigan Court of Appeals adopted a long-range goal of disposing of all appeals filed with it within 18 months of filing, commencing with those cases filed on and after October 1, 2003. Since the Preliminary Report that signaled the inception of the Court's delay reduction plan, the Court has issued Progress Reports No. 1, 2, 3, 4, 5, and 6. This Progress Report No. 7 sets out data covering the full year of 2003, with particular emphasis on the fourth quarter of the calendar year, the months of October, November, and December. The public can access each of the eight reports on the Court's web site at <http://courtofappeals.mjud.net/>.

To meet the Court's long-range goal of disposing of all appeals within 18 months of filing, the Court adopted two objectives:

- *First*, the Court determined that it would need to reduce the time to process an opinion case from its 2001 level of 653 days to approximately 497 days. The Court designed a number of actions, which took effect over the summer and fall of 2002 through the commencement of FY 2004 on October 1, 2003, to meet this first objective.
- *Second*, the Court determined that it would then need to further reduce the time it takes to process an opinion case to approximately 300 days, commencing October 1, 2003. This, in essence, means that the Court must substantially reduce or eliminate the component in processing time that called the "Warehouse."

This Progress Report shows that in 2003, *it took 99 fewer days to move an opinion case through the Court than it did in our base year of 2001*. Thus, the Court has accelerated the progress toward delay reduction that it achieved in the last half of 2002 and in the first nine months of 2003.

In the Court's presentation of its budget proposals for FY 2004 (the fiscal year commencing October 1, 2003), the Court concentrated on the Warehouse stage of its processing and made the point that with modest increases in the staff in its Research Division, it could eliminate or substantially reduce the time that a case gathers dust in the Warehouse. The Court was, therefore, extremely pleased that as part of an overall package of fee increase bills originated by the Supreme Court, supported by the Executive Branch, enacted by the Legislature, and signed by the Governor, it hopes to receive approximately \$525,000 more in revenues in FY 2004 than it received in FY 2003. These funds will allow the Court to increase its Research Division staff and complete the important work of drastically reducing or eliminating the Warehouse.

Indeed, that process is already well underway and the results to date have been extraordinarily positive. For opinion cases decided in the fourth quarter of 2003, there has been a significant decrease in overall average processing times:

### **Comparative Overall Processing Times**

<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>Fourth Quarter 2003</u>
653 Days	603 Days	554 Days	523 Days

*Thus, the average time to process an opinion case, from filing to decision, through the Court has decreased by 130 days when comparing the Court's base year of 2001 to the fourth*

*quarter of 2003.* As the Court expected, a significant portion of the these time savings—73 of the 130 days—has been achieved in the Warehouse stage:

<b><u>Comparative Overall Processing Times/Warehouse</u></b>			
<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>Fourth Quarter2003</u>
271 Days	261 Days	225 Days	198 Days

The Court’s core mission is to resolve the cases pending before it with due deliberation *and* due speed. The Court’s delay reduction plan will, if the Court is able to implement its final elements over the coming months, ensure due speed through the significant reduction of delay on appeal.

## **II. OVERVIEW**

### **A. Statement of the Problem**

In 2001, the Court disposed of approximately 7,600 cases. Of these, the Court disposed of 3,100 cases by opinion and the rest by order. On average, the Court disposed of these opinion cases within 653 days from the date of filing. The Judges of the Court unanimously determined that this time frame was not within acceptable limits and therefore adopted a comprehensive delay reduction plan on March 8, 2002. The Court has subsequently issued six progress reports detailing its progress on this plan. This seventh progress report covers the entire year of 2003, with particular emphasis on October, November, and December of 2003. All of the reports are available on the court’s website at <http://courtofappeals.mijud.net/resources/specialproj.htm>.

### **B. Goals and Objectives**

#### *1. Long-Range Goal*

The Court’s delay reduction plan involves an overall long-range goal and two shorter-term objectives designed to meet that goal. The long-range goal was to dispose of 95% of all the Court’s cases within 18 months of filing, commencing with those cases filed on or after October 1, 2003.

#### *2. First Short-Term Objective*

To achieve its long-range goal, the Court determined that it must first reduce the average time it takes to process an opinion case through the Court from its 2001 level of 653 days by 156 days, to approximately 497 days. To achieve this overall reduction, the Court has taken a three-pronged approach: *First*, the Court set very aggressive targets for disposing of cases once they reach the Judicial Chambers. *Second*, the Court, through a number of mechanisms, set equally aggressive targets for moving cases more quickly out of the Warehouse, basically by moving these cases directly into the Judicial Chambers at a considerably accelerated pace. *Third*, the Court proposed a number of changes in the Court Rules, to shorten the time in Intake. The Court designed these actions to take effect over the summer and fall of 2002 through the commencement of FY 2004 on October 1, 2003.

#### *3. Second Short-Term Objective*

Reducing the overall processing time for opinion cases from its 2001 level of 653 days to approximately 497 days will not, however, permit the Court to meet its long-range goal of disposing of 95% of all cases within 18 months of filing. To achieve this long-range goal, the Court must reduce its overall average processing time for opinion cases to approximately 300 days. The Court's second objective is therefore to eliminate or substantially reduce the Warehouse.

### III. RESULTS THROUGH THE THIRD QUARTER OF 2003 AS COMPARED TO FIRST OBJECTIVE

#### A. Processing Times

##### 1. *Overall*

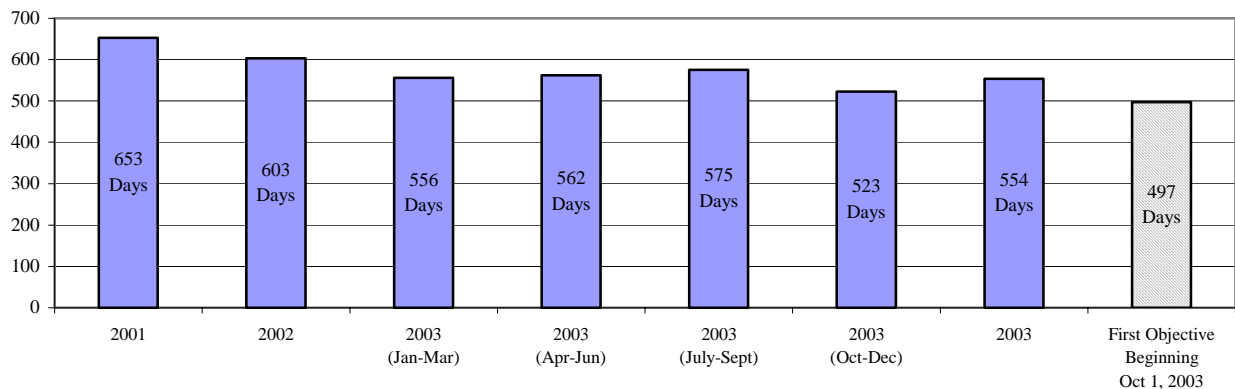
As Chart 1 shows, in 2001 the Court took 653 days on average to dispose of an opinion case. In 2002, this time was 603 days. In the fourth quarter of 2003, this time was 523 days. In the full year of 2003, this time was 554 days. Graph 1 shows these reductions on a comparative basis and relates them to the Court's first objective.

**Chart 1**

	2001	2002	2003 Jan-Mar	2003 Apr-Jun	2003 July-Sept	2003 Oct-Dec	2003
<b>Intake</b>	260	240	239	239	234	231	235
<b>Warehouse</b>	271	261	234	231	239	198	225
<b>Research</b>	61	62	55	60	67	68	64
<b>Judicial Chambers</b>	61	40	28	32	35	26	30
<b>Totals</b>	653	603	556	562	575	523	554

**Graph 1**

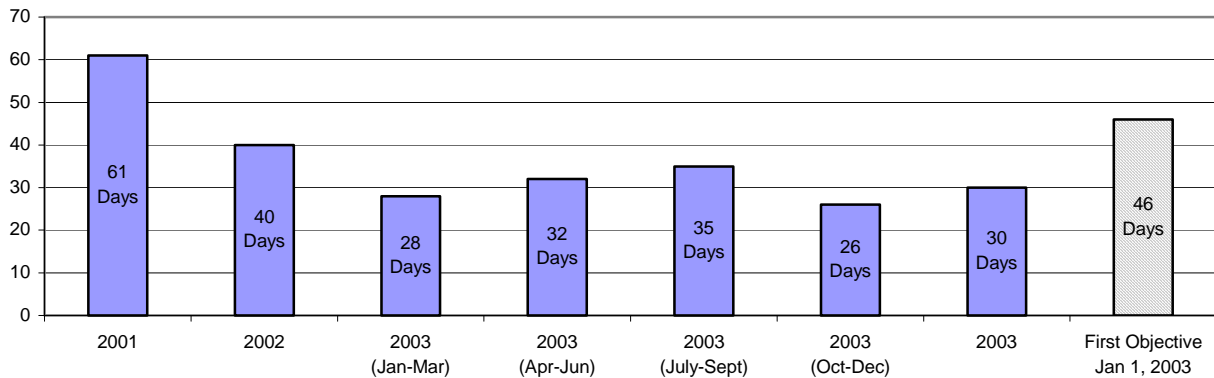
#### **Overall Time In Processing Compared To First Objective**



## 2. Judicial Chambers

As Chart 1 shows, in 2001 for those cases disposed of by opinion the time spent in the Judicial Chambers was 61 days. In 2002, this time was 40 days. In the fourth quarter of 2003, this time was 26 days. In the full year of 2003, this time was 30 days. Graph 2 shows these reductions on a comparative basis and relates them to the Court's first objective. As the graph shows, in 2003 the Court actually exceeded its objective by 16 days.

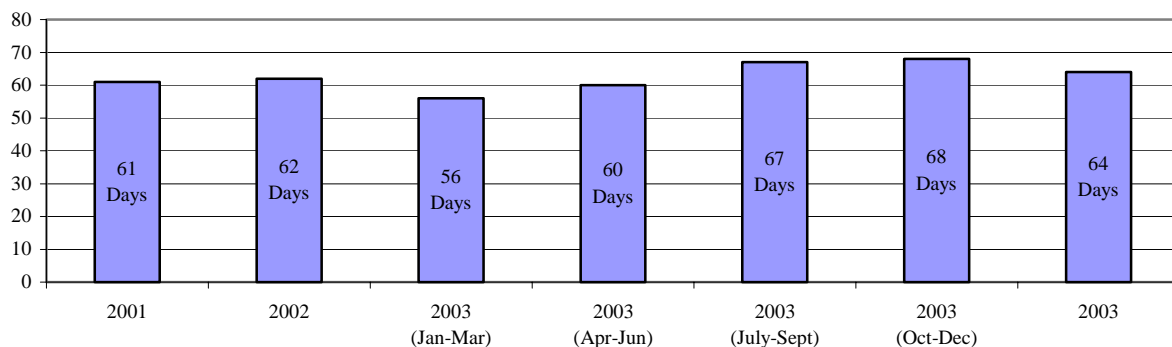
**Graph 2**  
**Processing Time In Judicial Chambers Compared To First Objective**



## 3. Research

As Chart 1 shows, in 2001 for those cases disposed of by opinion the time spent in the Research Division was 61 days. In 2002, this time was 62 days. In the fourth quarter of 2003, this time was 68 days. In the full year of 2003, this time was 64 days. Graph 3 shows these increases and reductions on a comparative basis.

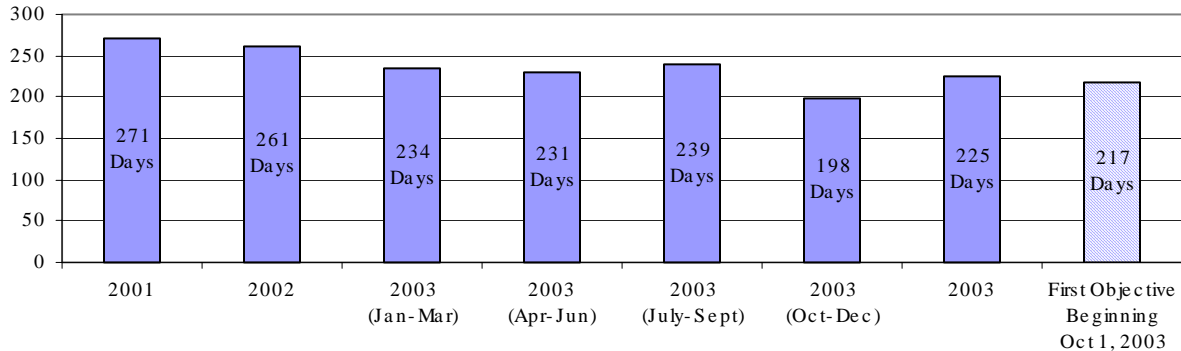
**Graph 3**  
**Processing Time In Research**



#### 4. Warehouse

As Chart 1 shows, in 2001 for those cases disposed of by opinion the time spent in the Warehouse was 271 days. In 2002, this time was 261 days. In the fourth quarter of 2003, this time was 198 days. In the full year of 2003, this time was 225 days. Graph 4 shows these increases and reductions on a comparative basis and relates them to the Court's first objective. As the graph shows, in the fourth quarter of 2003 the Court actually exceeded its objective by 19 days.

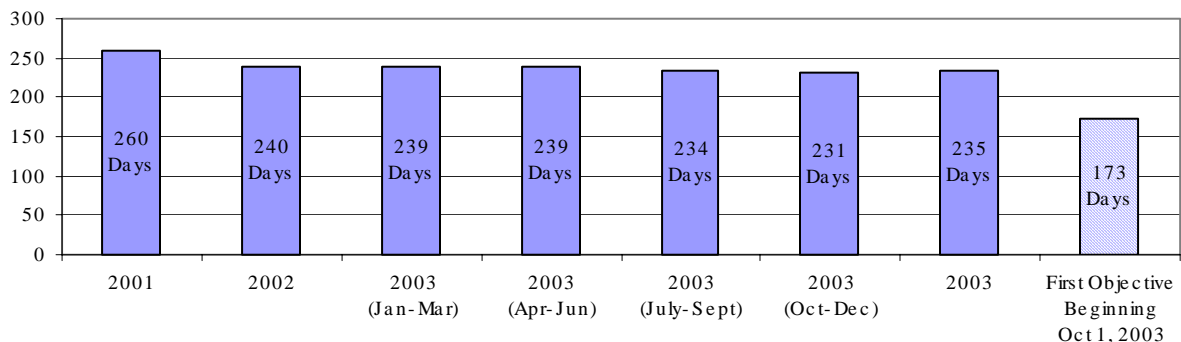
**Graph 4**  
**Processing Time In The Warehouse Compared To First Objective**



#### 5. Intake

As Chart 1 shows, in 2001 for those cases disposed of by opinion the time spent in Intake was 260 days. In 2002, this time was 240 days. In the fourth quarter of 2003, this time was 231 days. In the full year of 2003, this time was 235 days. Graph 5 shows these reductions on a comparative basis and relates them to the Court's first objective. Whether the Court has achieved its first objective as it relates to Intake will not be clear for a number of months because those cases filed on or after October 1, 2003, have not yet been decided by opinion.

**Graph 5**  
**Processing Time In Intake Compared To First Objective**



## **B. Case Differentiation**

Chart 2 shows the overall situation for cases that the Court disposed of by opinion for the full year of 2001, arrayed according to major case types.

**Chart 2**  
**2001**

	<b>Overall Average</b>	<b>Regular/ Complex</b>	<b>Summary</b>	<b>Non-Expedited</b>	<b>Expedited</b>	<b>Custody/TPR</b>
<b>Intake</b>	260	271	229	280	192	187
<b>Warehouse</b>	271	290	214	331	60	56
<b>Research</b>	61	61	62	63	56	52
<b>Judicial Chambers</b>	61	72	27	66	43	30
<b>Total</b>	653	694	532	740	351	325

Chart 3 shows the overall situation for cases that the Court disposed of by opinion for the full year of 2002, arrayed according to major case types.

**Chart 3**  
**2002**

	<b>Overall Average</b>	<b>Regular/ Complex</b>	<b>Summary</b>	<b>Non-Expedited</b>	<b>Expedited</b>	<b>Custody/TPR</b>
<b>Intake</b>	240	254	205	255	178	178
<b>Warehouse</b>	261	290	189	312	58	56
<b>Research</b>	62	59	69	61	66	67
<b>Judicial Chambers</b>	40	49	19	44	26	20
<b>Total</b>	603	652	482	672	328	321



Chart 4 shows the overall situation for cases that the Court disposed of by opinion for the full year of 2003, arrayed according to major case types.

**Chart 4**  
**2003**

	<b>Overall Average</b>	<b>Regular/ Complex</b>	<b>Summary</b>	<b>Non- Expedited</b>	<b>Expedited</b>	<b>Custody/TPR</b>
<b>Intake</b>	235	244	212	251	166	167
<b>Warehouse</b>	225	253	154	271	28	27
<b>Research</b>	64	63	64	63	66	67
<b>Judicial Chambers</b>	30	36	16	33	18	14
<b>Total</b>	554	596	446	618	278	275

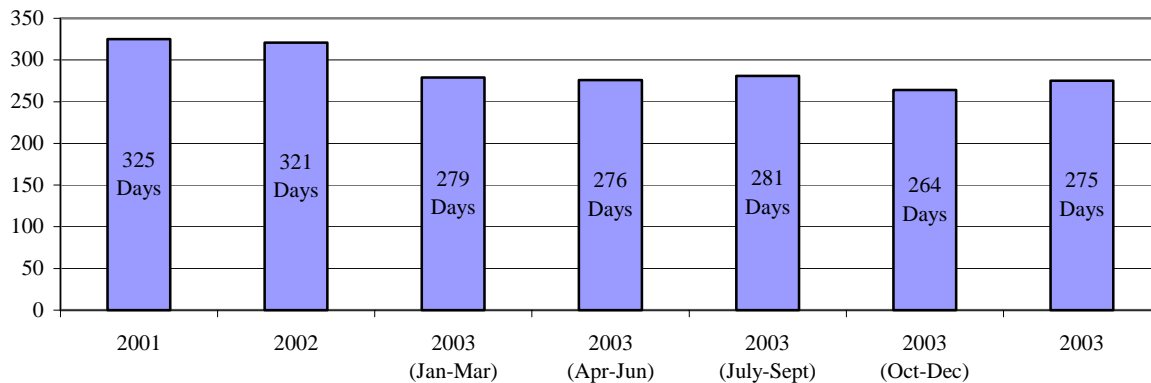
Chart 5 shows the overall situation for cases that the Court disposed of by opinion for the fourth quarter 2003, arrayed according to major case types.

**Chart 5**  
**Fourth Quarter 2003**

	<b>Overall Average</b>	<b>Regular/ Complex</b>	<b>Summary</b>	<b>Non- Expedited</b>	<b>Expedited</b>	<b>Custody/TPR</b>
<b>Intake</b>	231	244	196	248	153	152
<b>Warehouse</b>	198	211	164	235	30	26
<b>Research</b>	68	63	81	68	68	70
<b>Judicial Chambers</b>	26	30	17	28	17	16
<b>Total</b>	523	548	458	579	268	264

The Court has also focused special attention on dependency appeals. These appeals arise from trial court orders terminating parental rights (TPR) and deciding custody issues involving minor children in domestic relations cases. In 2001, it took 325 days, on average, to dispose of such cases by opinion. As Chart 5, above, shows, the Court reduced this time to 264 days in the fourth quarter of 2003. Of that time, 152 days was spent in the Intake stage. The combined time for all other stages was 112 days, including only 16 days in the Judicial Chambers. Graph 6 shows the situation with respect to dependency appeals beginning in 2001 through the fourth quarter of 2003.

**Graph 6**  
**Dependency Appeals**



The Dependency Appeals Work Group published its final report in May 2003. See [http://courtofappeals.mjud.net/pdf/Dependency Appeals Final Report May 2003.pdf](http://courtofappeals.mjud.net/pdf/Dependency%20Appeals%20Final%20Report%20May%202003.pdf). The Court of Appeals submitted proposed rule amendments to the Supreme Court that the Supreme Court adopted on February 3, 2004. These rule amendments focus on appeals from TPR orders and address delay that occurs *after* entry of such orders and *through* final disposition of an appeal to this Court. The goal is to reduce the disposition time to a total of seven months (210 days). The recommendations of the Work Group will result in an average time of 195 days from the date of the order terminating parental rights through disposition by the Court of Appeals. And only 167 days of that period (highlighted below) will occur at the Court of Appeals:

Days		
Order of TPR	0	Day zero on timeline
Request for counsel	14	Proposed amendment of MCR 3.977(I)(1)(c)
Form appoints counsel, orders transcripts, is claim of appeal	14	Proposed amendment of MCR 3.977(I)(2)
Receive claim of appeal	0	Receipt of claim occurs while transcripts are prepared
File transcripts	42	Due 42 days after ordered per MCR 7.210(B)(3)(b)(iii)
File AT brief	28	Current rule. MCR 7.212(A)(1)(a)(i)
File AE brief	21	Current rule. MCR 7.212(A)(2)(a)(i)
File record	14	Proposed amendment of MCR 7.210(G). ADM No. 2002-34
Send to research	7	Current policy
Complete report	28	Current policy
Submit on call	14	Policy approved in August 2003
Issue opinion	13	Average time at COA from January through June 2003
Total days	195	

In the fourth quarter of 2003, the Court hired additional contract attorneys with the delay reduction funding that the Legislature appropriated for FY 2004, so that dependency appeals can now receive research reports and be placed on call with virtually no delay. Further reductions in delay should occur as the recently adopted rule changes reduce the time in the Intake stage:

- Amendment of MCR 3.977(I) establishes an automatic claim of appeal that will also constitute the order of appointment of counsel and the order for production of transcripts, for a projected time reduction of 21 days.

- Amendment of MCR 7.210(G) would shorten the time for forwarding the lower court record from 21 days to 14 days. This proposal remains under consideration by the Supreme Court as part of ADM File No. 2002-34 that the Supreme Court took under advisement in Administrative Order 2003-6 dated November 9, 2003.

The net effect of these changes will be a reduction of time on appeal in TPR cases from the present nine-month average of 279 days to the projected average of 167 days.

### **C. Case Age**

As noted above, the Court decides a mix of cases, some by opinion and some by order. The Court's overall goal is to decide *all* of its cases within 18 months of filing. While the Court is gratified at the increasing percentage of cases in its inventory that are 18 months old or less at disposition, the Court still must make considerable progress if it is to meet its long-term goal of deciding 95% of all its cases within 18 months of filing.

#### **Percentage of Cases 18 Months Old Or Less At Disposition**

	<u>2001</u>	<u>2002</u>	<u>2003</u>
Opinions	25.03%	33.31%	46.59%
Orders	x <sup>1</sup>	97.36%	97.70%
Totals:	y <sup>1</sup>	66.92%	74.43%

## **IV. NEXT STEPS**

### **A. Increasing the Staff in the Research Division**

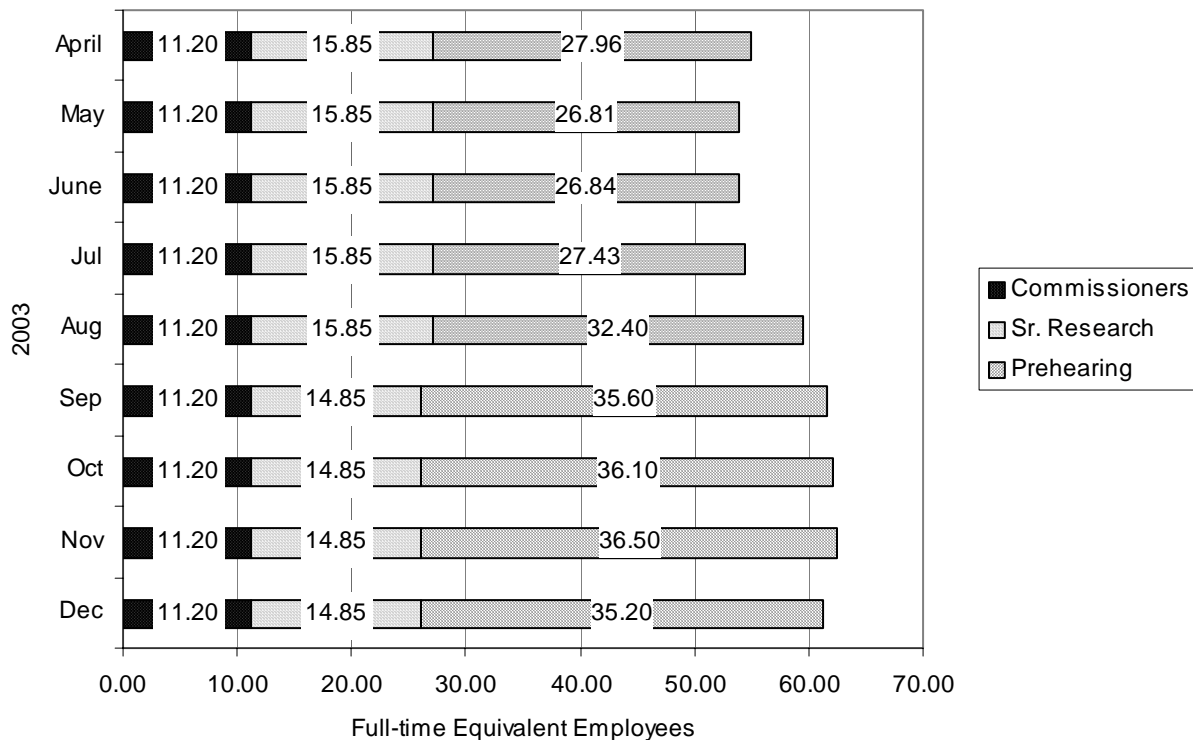
The Court recognized in March of 2002 that, given existing budget constraints, it was not realistic to expect that it could add new attorneys to its Research Division in either FY 2002 or FY 2003. Indeed, the Court actually experienced significant budget *reductions* during both of these fiscal years. Nevertheless, to meet its overall goal of disposing of 95% of all appeals within 18 months of filing, the Court must further reduce the time it takes to process an opinion case to approximately 300 days. In the presentation of its budget request for FY 2004, the Court emphasized that, in order to meet this goal, it must add attorneys to its Research Division and thereby drastically reduce or eliminate the Warehouse.

Fortunately, there was almost universal recognition of this urgent need. As part of an overall package of fee increase bills originated by the Supreme Court, supported by the Executive Branch, enacted by the Legislature, and signed by the Governor, the Court hopes to receive approximately \$525,000 more in revenues in FY 2004 from entry and motion fees than it received in FY 2003. These funds have allowed the Court to increase its Research Division staff and this accounts for the dramatic decrease in the wait in the Warehouse in the fourth quarter of 2003, from 239 days on average in the third quarter to 198 days on average in the fourth quarter.

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<sup>1</sup> These data are not readily available from the Court's database.

**Graph 7**  
**Staffing Levels In Research Division**



## **B. Reducing the Time in Intake**

As the Court builds up its staff in the Research Division to drastically reduce or eliminate the time a case spends in the Warehouse, it also must address the problem of the delay in Intake. As noted above, in 2001, an opinion case spent 260 days on average in Intake. In 2002, that time was 240 days on average and in 2003 it was 235 days on average. The Court initially proposed to reduce the time a case spends in Intake to 173 days on average for those cases filed on and after October 1, 2003. The Court proposed to meet that objective through adoption of the various changes to the court rules. These proposed changes remain under consideration by the Michigan Supreme Court while, at the same time, a Case Management Work Group with members from the Supreme Court, the Court of Appeals, and the Bar, develops a plan for the management of civil cases at the Court. But the bottom line still remains: based on current data, the Court must cut approximately 62 days from the time an opinion case spends in the Intake phase. Unless the Court can achieve such a reduction, it cannot reach its objective of deciding opinion cases in 300 days on average. Similarly, unless the Court decides its opinion cases in 300 days on average, it cannot reach its overall goal of deciding 95% of all its cases within 18 months of their filing.

## **V. CONCLUSIONS**

On March 8, 2002, the Judges of the Court of Appeals adopted the ambitious goal of disposing of 95% of all appeals filed with the Court within 18 months of filing. The Court's delay reduction plan, with the exception of changes to the court rules that would reduce the time a case spends in Intake, commenced on an overall basis in July of 2002. During 2003:

- The Court reduced the overall time it takes to dispose of an opinion case from the 2001 level of 653 days to 554 days. The Court's first objective was to reduce the time it takes to dispose of an opinion case to 497 days commencing fully on October 1, 2003. Thus, the Court will need to shorten the time it takes to dispose of an opinion case by another 57 days in order to meet its first objective.
- The Court reduced the time a case spends in the Judicial Chambers from the 2001 level of 61 days to 30 days. The Court therefore has achieved — indeed, it exceeded — its first objective.
- The Court reduced the time a case waits in the Warehouse from the 2001 level of 271 days to 198 days. The Court's objective was to reduce the wait in the Warehouse to 217 days by October 1, 2003. The Court therefore has now achieved — indeed, it exceeded — its first objective.
- The time a case spends in Intake has been reduced from the 2001 level of 260 days to 235 days. The Court's objective was to reduce the time in Intake to 173 days commencing with the cases filed on and after October 1, 2003. Thus, the Court will need to reduce the time a case spends in Intake by another 62 days to meet its objective.
- The Court has reduced the overall time it takes to process dependency appeals from the 2001 level of 325 days to 275 days. The recently adopted rule changes (and the ultimate adoption of the remaining proposals for changing MCR 7.210 as to the time for filing the record with the Court) will further reduce the time on appeal of TPR cases to a projected average of 167 days.

Chart 6 summarizes the further progress that will be needed to meet the Court's first objective of reducing the time it takes to dispose of an opinion case from the 2001 level of 653 days to 497 days commencing fully on October 1, 2003.

**Chart 6**  
**October 2003 Objective**

	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>Improvement To Date</b>	<b>First Objective</b>	<b>Improvement Needed To Meet First Objective</b>
<b>Intake</b>	260	240	235	25	173	62
<b>Warehouse</b>	271	261	225	46	217	8
<b>Research</b>	61	62	64	(3)	61	3
<b>Judicial Chambers</b>	61	40	30	31	46	(16)
<b>Total</b>	653	603	554	99	497	57

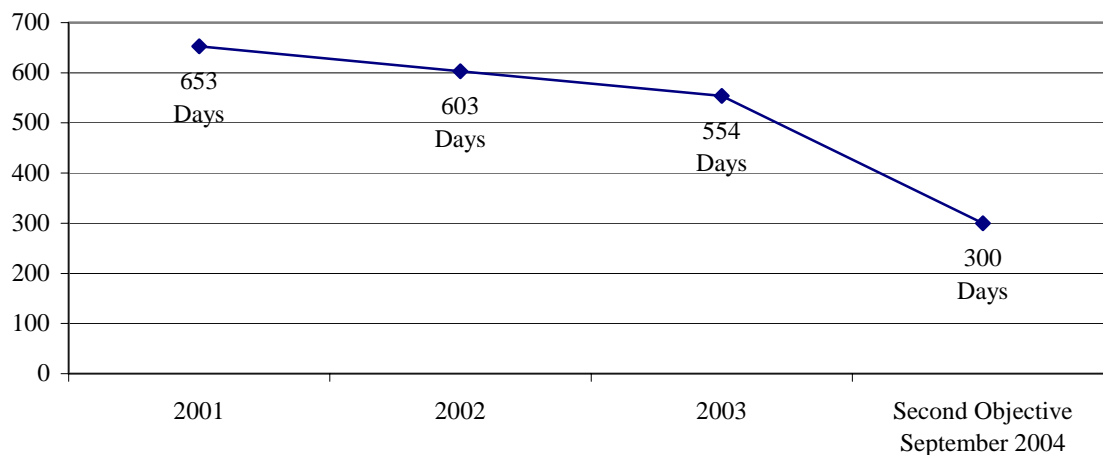
Chart 7 summarizes the additional progress that will be needed to meet the Court's second objective of reducing the time it takes to dispose of an opinion case from the 2001 level of 653 days to approximately 300 days by September of 2004.

**Chart 7**  
**September 2004 Objective**

	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>Improvement To Date</b>	<b>Second Objective</b>	<b>Improvement Needed To Meet Second Objective</b>
<b>Intake</b>	260	240	235	25	173	62
<b>Warehouse</b>	271	261	225	46	0	225
<b>Research</b>	61	62	64	(3)	61	3
<b>Judicial Chambers</b>	61	40	30	31	46	(16)
<b>Total</b>	653	603	554	99	280	274

Graph 8 illustrates the situation from a different perspective, showing the Court's starting point in 2001, the progress the Court made through 2002 and 2003, and the second objective for September of 2004.

**Graph 8**  
**Progress Toward Objectives**



As mentioned in previous progress reports, the Court has established a solid base upon which it can build over the next year so that it can achieve its long-range goal of deciding 95% of all appeals within 18 months of filing. The Court's core mission is to resolve the cases pending before it with due deliberation *and* due speed. Existing Court policies and procedures are focused on ensuring due deliberation. The Court's delay reduction plan will ensure due speed through the significant reduction of delay on appeal. This is part of the Court's core mission and is, and shall remain, a first priority of the Court.